
Regarding Jim Hall's Email of April 16, 2021

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Friday, April 23, 2021 at 4:37:16 PM Eastern Daylight Time

To: anlowery@pa.gov anlowery@pa.gov, chfox@pa.gov Fox, Charles, jameshall@pa.gov Hall, James, geleone@pa.gov geleone@pa.gov

Cc: captain@sailfnl.org William Sabatini, halupcellars@aol.com ANN HALUPCZYNSKI, boardpresident@sailfnl.org Ann Halupczynski

Dear PHMC Executive Team and Counsel,

For those of you unaware of me, I am the solicitor for the Flagship Niagara League, Inc. ("FNL"). I have been asked to respond to Jim Hall's email of April 16, 2021 on behalf of FNL and its Board of Trustees.

On April 16, 2021, the Flagship Niagara League received the following correspondence, ostensibly authored by Jim Hall, PHMC's Site Administrator for the Erie Maritime Museum:

Good morning all,

PHMC has recently been in receipt of information about certain of the FNL's plans for the spring as well as its proposed health and safety policies. As owner and administrator of the *Brig Niagara*, please be advised that PHMC has not given FNL permission to sail or use the *Brig Niagara* (and neither has FNL sought permission) whether to complete Coast Guard inspection or any other activity. Therefore, the FNL should not remove the canvas covering of the *Niagara*, and the FNL's recruitment and hiring of summer staff positions to crew the *Niagara* should be suspended. Offers of hire made without the express approval of the PHMC Site Administrator will need to be rescinded, as the *Brig* will remain at dock until further notice.

Please be reminded that all of PHMC's sites, museums, and property are subject to the same health and safety-related mitigation measures that are in force across all Commonwealth agencies and property. As it is not a Commonwealth-owned property, PHMC has no position regarding FNL's proposed operation of the *Lettie G. Howard*, however, please note that access to the *Lettie G. Howard* as a programming site when docked at the Erie Maritime Museum can only be permitted when the museum is open to the public. This includes both boarding and disembarking of passengers for any static or underway programming originating or ending at the Museum docking facility. Erie Maritime Museum operating hours for April 30, 2021 – June 30, 2021 will be Fridays & Saturdays only, 9AM - 5PM with last admission sold at 4PM.

Please confirm receipt of this notice. Please convey any additional questions to me such that PHMC's executive team and counsel may answer as thoroughly and quickly as possible.

Sincerely, JIM

I am writing in response to this email to correct a number of inaccuracies in the original correspondence, and hopefully to clear up some apparent misunderstandings.

It is incorrect to assert that PHMC has only "recently" been in receipt of FNL's plans for the spring, or its proposed health and safety policies. FNL, through Captain Christopher Cusson and Executive Director William Sabatini, has been communicating—or at least attempting to communicate—with the Site Administrator about these issues since late December 2020. On December 28, 2020, Captain Cusson emailed Mr. Hall. In that email, he advised Mr. Hall of FNL's

tentative plans for both the Niagara and the Lettie G. Howard. He provided a copy of the proposed “FNL Covid-19 Safety Policy and Guidelines for FNL Operated Vessels 2021 (CRC 12/22/2020)” and asked for feedback from PHMC and for the scheduling of a discussion regarding operations for the summer of 2021. After just over two weeks with no reply, Captain Cusson followed up with a “reminder” email on January 14, 2021, emphasizing FNL’s desire to discuss operational matters with PHMC. Mr. Hall’s response was: “[O]h my! This must have fallen off my radar – let me get on this & get back to you. Glad you poked me” (See attached Exhibits 1 and 2).

At FNL’s January 2021 board meeting, there was some discussion about the EMM reopening on a limited schedule. On January 27, 2021, Captain Cusson sought clarification on how the EMM’s limited reopening might impact the sailing operations of both the Niagara and the Lettie G. Howard and asked for an online meeting regarding the same. Mr. Hall never replied to the email or the online meeting request. (See Exhibit 1).

The above correspondence also claims that “PHMC has not given FNL permission to sail or use the *Brig Niagara* (and neither has FNL sought permission) whether to complete Coast Guard inspection or any other activity.” This is also incorrect.

The current Associate’s Agreement and Management Agreement clearly constitute PHMC’s grant of permission to FNL to operate and maintain the Niagara. We recognize that the pandemic has imposed certain limitations on those activities, but it has not voided either contract. FNL has both rights and responsibilities under the terms of the existing agreements, and it intends to exercise the former and fulfill the latter to the greatest extent possible in light of the current situation. Further, FNL sought—and obtained—permission for the basic operation of Niagara (subject to limitations resulting from the pandemic, of course) from the Site Administrator.

FNL’s Executive Director, William Sabatini, and Captain Cusson met with Jim Hall on February 4 or 5, 2021 to discuss these issues. Captain Cusson sent an email to Mr. Hall and Executive Director Sabatini on February 5, 2021 summarizing what had been discussed and agreed to during their conversation. (Exhibit 3). Mr. Hall did not respond to that email or otherwise indicate that the information therein was inaccurate.

Captain Cusson emailed Mr. Hall on March 23, 2021 advising him of the Niagara’s plans for the summer regarding the hiring of crew and maintenance activities. (Exhibit 4). There was no response. Also on March 23, 2021, Mr. Hall attended the monthly meeting of the FNL Board of Trustees. At that meeting, with Mr. Hall present, there was a discussion about sending both Niagara and the Lettie G. Howard to shipyard. A motion to that effect was made, seconded, and approved; Mr. Hall offered no comment or objection.

On April 6, 2021, Captain Cusson communicated with Mr. Hall regarding plans to get both the Niagara and the Lettie G. Howard to the shipyard for inspections and maintenance, as well as regarding the hiring of a captain for the Lettie G. Howard. There was no response, so Captain Cusson sent follow-up emails on April 9 and April 12, 2021. Mr. Hall responded with his approval on April 12, 2021, asking only for a copy of the new captain’s resume’/CV, which was provided. (Exhibit 5). Further, and with specific regard to removing the winter canvas and temporary superstructure from the Niagara, **permission was specifically sought and received from the Site Administrator to do exactly that.** Captain Cusson discussed the matter with Mr. Hall on April 8, 2021. He then followed up with an email to Mr. Hall on April 9, 2021. When there was no response to that email, he followed up with additional emails on April 12 and 13, 2021. Mr. Hall finally responded on April 13, 2021, stating:

Just try to keep ‘em all masked up & as far apart as possible!

We should also make sure to get an accurate accounting of everyone participating in be event we find ourselves in need of contact tracing info.

Anyone feeling under the weather - send ‘em home!

Let me know how sign ups go & if you end up needing extra hands - thanks & good luck! - JIM

On April 14, 2021, Captain Cusson responded and advised Mr. Hall of how many volunteers he expected and the days when the volunteers would be working. There was no reply from Mr. Hall. (Exhibit 6). Finally, Captain Cusson emailed Mr. Hall on April 12, 2021 specifically requesting an opportunity to meet and discuss ship operations and proposing specific dates and times. When there was no reply, he followed up with another email request, to which only a vague response was offered. A meeting was finally held on April 14, 2021, and a follow-up email was circulated to attendees on April 15, 2021. It detailed the sum and substance of the meeting on April 14, 2021 and included concrete plans for moving forward that had been discussed with and approved by the Site Administrator. (Exhibit 7).

In light of all of this, you can understand, perhaps, our confusion as to both the content and tenor of PHMC's "cease and desist" email of April 16, 2021.

FNL has been completely above-board and transparent in its ongoing communications with PHMC. The Site Administrator is PHMC's designated representative at EMM, and FNL has sought his input and, where appropriate, approval at every turn. Any suggestion to the contrary is flatly wrong, and we cannot and will not allow such misrepresentations to stand unchallenged.

We recognize that there are going to be limits on what the Niagara and Lettie G. Howard are going to be able to do this year based on the pandemic. No one is suggesting otherwise. There are, however, things that need to be done for the maintenance and upkeep of both vessels. Getting them to the shipyard is critical. The Coast Guard inspections are not optional. Pennsylvania statute requires that the Niagara—which is the property of the Commonwealth—be maintained and sailed. With regard to the Niagara, all of these things are ultimately the responsibility of PHMC. PHMC is not presently able to do any of these things, however, except through its contractual relationship with FNL. FNL is trying to fulfill its contractual obligations but cannot effectively do so in the face of opposition from PHMC.

Moving forward, we would like to understand what PHMC's goals and intentions are for Niagara, both in 2021 and beyond.

With regard to 2021, and specifically with regard to the directions set forth in PHMC's email of April 16, 2021, we would ask for clarification on several points:

- Why have we been instructed to not remove the winter canvas and temporary superstructure from Niagara?
- Why are we not permitted to hire any crew for Niagara?
- Why are we not permitted to take Niagara to shipyard?
- Why are we not permitted to have Niagara go through her U.S. Coast Guard inspection?

All of these activities have a significant impact on the condition of the ship. Having a vessel constantly sit tied up at dock is not "healthy" for it. Wooden vessels need to move, and to be regularly maintained; failing to do so can lead to significantly increased repair costs. Unnecessarily delaying these activities will also impact Niagara's ability to conduct day sails, sail training, and port visits (all of which are part of Niagara's statutory mandate) when such things are again permissible under the Commonwealth's Department of Health Covid-19 guidelines.

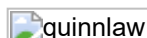
We would also ask for clarification as to the authority of the Site Administrator as the spokesperson for PHMC. As reflected in the attached exhibits, FNL has communicated extensively with the Site Administrator with regard to plans and goals for safe operations in 2021, and actually received authorization from the Site Administrator, to undertake a number of activities, only to be told last Friday that not only (in PHMC's view) had it not received permission to do these things, FNL had not even asked for permission. How is FNL to reconcile these two conflicting positions—should it be communicating with the Site Administrator, or with someone else?

FNL is doing its level best to be a good and responsible partner to PHMC with regard to the preservation, maintenance, and operation of the Niagara, and make the ship something of which we can all be proud. We frankly are at a loss as to the resistance being offered by PHMC to what ought to be fairly routine discussions and activities even in light of the pandemic. FNL is attempting to fulfill its contractual obligations under the terms of the Associate's Agreement and the Management Agreement as they currently stand, and will be submitting its observations, questions, and suggestions to PHMC regarding the renewal of these contractual relationships within the next few days so that, hopefully, FNL and PHMC can continue to move forward as partners in this endeavor.

We would be happy to discuss these issues with the appropriate representatives of PHMC and request the courtesy of the response within the next ten (10) days. We sincerely hope that we can have an open and constructive dialogue to resolve these issues.

Very truly yours,

Arthur D. Martinucci
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Attachments:

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Cusson to Hall, 12-28-20-1-27-21 (Exhibit 1) (01435938xA7AE3).pdf 117k

Cusson Proposed Covid Protocols 12-22-2020 (Exhibit 2) (01435939xA7AE3).pdf 259k

Cusson to Hall, 2-5-2021 (Exhibit 3) (01436649xA7AE3).pdf 160k

Cusson to Hall, 3-23-21 - Operations, Crew (Exhibit 4) (01435944xA7AE3).pdf 102k

Cusson to Hall, Lettie Captain Hiring-Approval (Exhibit 5) (01435946xA7AE3).pdf 166k

Cusson to Hall, 4-9-21-4-14-21 - Uncovering Niagara (Exhibit 6) (01435942xA7AE3).pdf 190k

Cusson, Sabatini to Hall, 4-12-21-4-15-21 - Operations (Exhibit 7) (01435967xA7AE3).pdf 214k